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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
☒ Affects Pacific Gas and Electric
Company
☐ Affects both Debtors

** All papers shall be filed in the Lead
Case, No. 19-30088 (DM).*

Bankruptcy Case No. 19-30088 (DM)
Chapter 11 (Lead Case) (Jointly Administered)

**DECLARATION OF STEVEN FRANK IN SUPPORT
OF DEBTORS' MOTION PURSUANT TO 11 U.S.C
§ 105(a) AND FED. R. BANKR. P. 9019 FOR AN
ORDER (I) APPROVING SETTLEMENT
AGREEMENT RESOLVING EX PARTE OII AND
(II) GRANTING RELATED RELIEF**

Date: April 29, 2020

Time: 10:00 am (Pacific Time)

Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

Judge: Hon. Dennis Montali

Objection Deadline: April 22, 2020, 4:00 pm (PT)

1 I, Steven Frank, pursuant to section 1746 of title 28 of the United States Code, hereby
2 declare under penalty of perjury that the following is true and correct to the best of my knowledge,
3 information, and belief:

4 I am an attorney in the Law Department of Pacific Gas and Electric Company
5 (the “**Utility**”), a position I have held since 1998. The Utility is a wholly-owned subsidiary of PG&E
6 Corporation (“**PG&E Corp.**” and, together with the Utility, the “**Debtors**”). In my role in the Law
7 Department, I have appeared on behalf of the Utility in numerous regulatory proceedings before the
8 California Public Utilities Commission (“**CPUC**”).

9 I am authorized to submit this Declaration (the “**Declaration**”) on behalf of the Debtors
10 in support of the *Debtors’ Motion Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9019 for Entry*
11 *of an Order (I) Approving Settlement Agreement Resolving Ex Parte OII and (II) Granting Related Relief*
12 (the “**Motion**”), filed contemporaneously herewith.¹ The facts set forth in this Declaration are based
13 upon my personal knowledge, my review of relevant documents, or information provided to me by other
14 members of my team working under my supervision and direction. If called upon to testify, I would
15 testify competently to the facts set forth in this Declaration.

16 As described in the Motion, the Utility has reached a settlement (the “**Phase II**
17 **Settlement Agreement**”) with the City of San Bruno, the City of San Carlos, the Public Advocates
18 Office, the Safety and Enforcement Division (“**SED**”) of the CPUC, and The Utility Reform Network
19 (“**TURN**” and, collectively, the “**Parties**”) that resolves a proceeding commenced by the CPUC to
20 determine whether the Utility should be sanctioned for violations of Article 8 of the CPUC’s Rules of
21 Practice and Procedure (C.C.R. Title 20, Div. 1, Ch.1, Sections 8.1 *et seq.*), Rule 1.1 of the Rules of
22 Practice and Procedure, and Public Utilities Code (Pub. Util. Code) §§ 1701.2(c) and 1701.3(c)
23 (collectively, the “**Ex Parte Rules**”) governing ex parte communications between the Utility and CPUC
24 officials, including Administrative Law Judges, Commissioners, and Commissioners’ advisors (the “**Ex**
25 **Parte OII**”).

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28 ¹ Capitalized terms used but not otherwise herein defined shall have the meanings ascribed to such terms
in the Motion.

1 **A. The Ex Parte OII Proceeding and its Resolution**

2 On November 23, 2015, the CPUC issued an Order Instituting Investigation 15-11-015,
3 commencing the Ex Parte OII to determine whether communications reflected in certain emails sent
4 or received by the Utility's officers and employees violate the Ex Parte Rules.

5 Resolution of the Ex Parte OII occurred in two phases. The first phase of the Ex Parte
6 OII ("**Phase I**") related to emails disclosed by the Utility in 2014 and 2015 and allegations of ex parte
7 violations levied by the City of San Bruno in 2014 and was resolved by a settlement (the "**Phase I**
8 **Settlement Agreement**"). The Phase I Settlement Agreement, which was submitted to the CPUC in
9 March of 2017, proposed, among other things:

10 (a) A total financial remedy of \$86.5 million, allocated among:

- 11 (i) \$1 million paid by the Utility to the State of California's General Fund
 (the "**California General Fund**");
- 12 (ii) A \$63.5 million credit to ratepayers in the Utility's 2015 Gas Transmission
 and Storage rate case;
- 13 (iii) A \$10 million credit to ratepayers in the Utility's 2020 General Rate Case;
 and
- 14 (iv) \$6 million in compensatory payments each to the City of San Bruno and the
15 City of San Carlos; and

16 (b) Non-financial remedies in which the Utility agreed to:

- 17 (i) Provide notice to the Public Advocates Office, SED, and TURN
18 (collectively, the "**Notice Parties**") of any tours of the Utility's facilities by
 a CPUC decisionmaker, from 2018- 2020;
- 19 (ii) Provide notice to the Notice Parties any time the Utility sends a CPUC
20 decisionmaker any credit rating agency or investor report or analysis, for a
 period of three years;
- 21 (iii) Provide notice to the Notice Parties any time certain Utility officers attend
22 certain planned meetings with a CPUC or Commissioner's advisor, for a
 period of two years; and
- 23 (iv) Provide training to the Utility's Regulatory Affairs employees and Law
24 Department attorneys on the CPUC's ex parte rules, for a period of three
 years.

25 On September 1, 2017, the Administrative Law Judge ("**ALJ**") assigned to oversee the
26 Phase I proceeding issued a proposed decision (the "**Proposed Decision**") that modified the financial
27 remedy contemplated by the Parties, increasing the amount to be paid to the California General Fund
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1 from \$1 million to \$12 million, resulting in a total financial remedy to be paid by the Utility for Phase I
2 of \$97.5 million. On September 21, 2017, the Utility filed a motion agreeing to the ALJ's proposed
3 modifications in the Proposed Decision.

4 Along with the motion accepting the Proposed Decision's modifications, the Utility
5 disclosed 16 additional emails from 2013 – 2014 (the "**September 2017 Disclosure**") that the Utility
6 discovered while responding to an unrelated governmental inquiry that raised similar issues as the
7 communications that were encompassed in the Phase I Settlement Agreement. Following several
8 discussions, on November 1, 2017, the Parties, other than the Utility, submitted a joint filing accepting
9 the Proposed Decision and requesting that the CPUC open a second phase ("**Phase II**") of the Ex Parte
10 OII to address the emails included in the Utility's September 2017 Disclosure. On May 3, 2018, the
11 CPUC approved the Proposed Decision adopting the modified Phase I Settlement Agreement and
12 commencing Phase II of the Ex Parte OII.

13 Following an initial meet and confer and discovery period, the CPUC held a prehearing
14 conference on Phase II of the Ex Parte OII on March 9, 2019. During the latter half of 2018 and the first
15 half of 2019, the Parties engaged in settlement discussions, which culminated in the Phase II Settlement
16 Agreement, which resolves all remaining issues in the Ex Parte OII proceeding. The Parties filed a joint
17 motion seeking CPUC approval of the Phase II Settlement Agreement on June 28, 2019, which was
18 subsequently approved by the CPUC Order dated December 5, 2019. A true and correct copy of the
19 CPUC Order, along with a copy of the Phase II Settlement Agreement, is attached hereto as **Annex 1**.

20 **B. The Material Terms of the Phase II Settlement Agreement**

21 The Phase II Settlement Agreement fully resolves Phase II of the Ex Parte OII and any
22 disputed claims, allegations or outstanding issues related thereto. The key terms and provisions of the
23 Phase II Settlement Agreement, as approved by the CPUC Order, are summarized below.²

24 **i. Financial Remedies**

25 Pursuant to the Phase II Settlement Agreement, the Utility will pay financial remedies

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27 ² This summary is qualified in its entirety by reference to the provisions of the CPUC Order and of the
28 Phase II Settlement Agreement. To the extent that any discrepancies exist between the summary
described in this Declaration and the terms of the CPUC Order and Phase II Settlement Agreement, the
CPUC Order and Phase II Settlement Agreement shall govern.

1 totaling \$10 million (the “**Financial Remedies**”), none of which shall be borne by ratepayers. The
2 Financial Remedies consist of the following: (i) \$2 million to be contributed by the Utility to the
3 California General Fund (the “**General Fund Claim**”) pursuant to Section 2100 *et seq.* of the Public
4 Utilities Code; (ii) the Utility forgoing a collection of \$5 million in revenue requirements during the term
5 of its 2019 Gas Transmission and Storage rate case (the “**Gas Transmission and Storage Ratemaking**
6 **Remedy**”); (iii) the Utility foregoing a collection of \$1 million in revenue requirements during the term
7 of its 2020 General Rate Case cycle (the “**General Rate Case Ratemaking Remedy**” and, together with
8 the Gas Transmission and Storage Ratemaking Remedy, the “**Ratemaking Remedies**”); (iv) \$1 million
9 to be contributed by the Utility to the City of San Bruno General Fund (the “**San Bruno Fund Claim**”);
10 and (v) \$1 million to be contributed by the Utility to the City of San Carlos General Fund (the “**San**
11 **Carlos Fund Claim**” and together with the General Fund Claim and San Bruno Fund Claim, the
12 “**Financial Claims**”).

13 **ii. Non-Financial Remedies**

14 In addition to the non-financial remedies agreed to in Phase 1, the Utility agreed to
15 additional non-financial remedies that are tailored to the issues raised in Phase II of the Ex Parte OII
16 (collectively, the “**Non-Financial Remedies**”). The Non-Financial Remedies consist of the following:

- 17 (a) Through December 31, 2025, if the Utility gives a tour of its facilities to a CPUC
18 decisionmaker it will provide notice within three days of the tour in an open General
19 Rate Case, Gas Transmission and Storage rate case, or other relevant cost recovery
20 case if the facility, technology, process, or information to be addressed during the
21 tour is at issue in such a case, and will additionally invite a representative of each
22 of the Public Advocates Office, the SED, and TURN to attend the tour. This is
23 intended as an extension of the remedy agreed to by the Utility in the settlement of
24 Phase I;
- 25 (b) Through December 31, 2025, if the Utility transmits via email a credit rating agency
26 or investor report or analysis to a CPUC decisionmaker, the Utility simultaneously
27 will provide a copy to designated representatives of the Public Advocates Office,
28 the SED, TURN, and all parties in the Utility’s most recent cost of capital, General
Rate Case, and Gas Transmission and Storage proceedings. This is intended as an
extension of the remedy agreed to by the Utility in the settlement of Phase I;
- (c) Through December 31, 2025, if the Corporation’s Chief Executive Officer, the
Utility’s President, the Corporation’s Chief Financial Officer, or the Corporation’s
General Counsel, participates in a meeting arranged or accepted by the Utility to be
attended only by the Utility and its agents and the CPUC Commissioner and/or the
Commissioner’s advisors, the Utility will provide notice within three days to

1 designated representatives of the Public Advocates Office and of TURN. This is
2 intended as an extension of the remedy agreed to by the Utility in the settlement of
Phase I;

3 (d) The Utility will provide training on the CPUC's ex parte communication rules, and
4 through December 31, 2025, the Utility will provide to the other Parties to the Phase
5 II Settlement Agreement (i) a copy of the training materials used for this purpose,
6 and (ii) an annual certificate of completion for the training of all officers, Regulatory
Affairs (or its successor) employees and Law Department attorneys. This is
intended as an extension of the remedy agreed to by the Utility in the settlement of
Phase I;

7 (e) The Utility will not contract with outside parties for "Advocacy Work" before the
8 CPUC through December 31, 2025. "Advocacy Work" means lobbying on behalf
9 of the Utility directly before the CPUC, other than in a public hearing, workshop,
10 or other public forum, which has been noticed to the official service list or on the
11 record of a CPUC proceeding. Advocacy Work does not include (i) testimony or
12 participation in a public hearing, workshop, or other public forum, which has been
13 noticed to the official service list or on the record of a CPUC proceeding, (ii) the
provision of technical, advisory, or expert services to support the Utility's advocacy
before the CPUC, where the primary purpose of such services is the technical,
advisory, or expert services, and not lobbying, or (iii) lobbying work before any
governmental body other than the CPUC;

14 (f) Commencing in January 1, 2026 and continuing through December 31, 2030, the
15 Utility shall include in all contracts with outside parties for "Advocacy Work," as
16 defined above, before the CPUC a summary of the CPUC's ex parte communication
17 rules, as then in effect, and contractually obligate the outside parties to adhere to
these rules. The Utility shall provide the summary of the ex parte rules it intends to
include in such contracts to the Public Advocates Office, the SED, and TURN
before January 1, 2026; and

18 (g) The Utility will not oppose a request by any of the Parties for a rulemaking to
19 consider a change to the CPUC's rules that would extend the ex parte rules set forth
20 in Article 8 of the CPUC's Rules of Practice and Procedure to cover, as a
"ratesetting proceeding," the advice letter process for those instances where the
process could result in a CPUC resolution.

21 **iii. Bankruptcy Court Approval and Timing of Payments**

22 Pursuant to the CPUC Order, the Utility is required to seek Bankruptcy Court approval
23 of the Phase II Settlement Agreement. *See* CPUC Order at 26, ¶2.

24 As set forth in the Phase II Settlement Agreement, the Parties agreed that the Utility will
25 satisfy the Financial Claims in accordance with the terms of a Bankruptcy Court order authorizing
26 payment of the Financial Claims, in full or in part, pursuant to the terms of a confirmed chapter 11 plan
27 of reorganization. *See* Phase II Settlement Agreement ¶3.8. The Phase II Settlement Agreement further
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1 provides that, if neither the confirmed chapter 11 plan of reorganization nor the CPUC specifies a time
2 by which PG&E shall satisfy the Financial Claims, payments to the City of San Bruno, the City of San
3 Carlos, and the California General Fund shall be received no later than any confirmed chapter 11 plan
4 of reorganization's effective date, or, if not reasonably practicable, no later than thirty (30) days after
5 such effective date. *Id.* Additionally, absent instruction by the CPUC and Bankruptcy Court otherwise,
6 the Parties agree that satisfaction of the Ratemaking Remedies shall occur no later than the first
7 reasonable opportunity to do so following the effective date of any confirmed plan. *Id.* The Phase II
8 Settlement Agreement further provides that within ten (10) days of the effective date of any confirmed
9 plan, the Utility shall file a report in the Ex Parte OII proceeding that explains the treatment of the
10 Financial Remedies under the plan and indicates when and how the Utility will satisfy the Financial
11 Remedies. *Id.*

12 The CPUC Order both approves the Phase II Settlement Agreement and orders PG&E to
13 make payment to the State General Fund within 30 days of the Court's approval of this Motion, thus
14 creating some ambiguity regarding timing of the satisfaction of the General Fund Claim. I believe that
15 the CPUC Order should be interpreted to support the Parties' intention to satisfy the General Fund Claim,
16 along with the other Financial Claims, within 30 days after a confirmed chapter 11 plan of reorganization
17 becoming effective, not within 30 days of the Court's approval of the Motion.

18 **C. The Settlement Agreement Should Be Approved**

19 I actively participated in the negotiations with the Parties, in subsequent discussions with
20 the Utility's management and other advisors in evaluating the potential benefits of the Phase II
21 Settlement Agreement, and the Utility's decision to enter into the Phase II Settlement Agreement.

22 The Phase II Settlement Agreement is the product of extensive good faith, arm's-length
23 negotiations among the Parties. Other Utility representatives and I attended multiple settlement
24 conferences and had numerous discussions with the Parties, which began in the latter half of 2018 and
25 culminated in the filing of the motion to approve the Phase II Settlement Agreement on June 28, 2019.
26 Throughout this process, the Parties had ample opportunity to participate in the Ex Parte OII proceeding
27 and comment on the Phase II Settlement Agreement. All parties supported or did not oppose the Phase
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1 II Settlement Agreement.

2 I believe that the terms of the Phase II Settlement Agreement are fair and reasonable and
3 in the best interests of the Utility, its estate, creditors, and other stakeholders, and should be approved.
4 The Phase II Settlement Agreement fully resolves the Ex Parte OII, eliminates the costs and uncertainties
5 associated with further litigation, including the possible costs of rehearing, appeal, and additional
6 penalties, and benefits the Utility's customers through the Ratemaking Remedies therein.

7 Entry into the Phase II Settlement Agreement allows the Utility to avoid the risks and
8 uncertainties of a continued CPUC proceeding, including the potential for greater penalties. The Utility
9 has admitted that certain communications at issue in the Phase II Settlement Agreement violated the Ex
10 Parte Rules and all the Parties agree that communications in the jointly-approved evidentiary record
11 reflect serious misconduct, raise new issues not addressed in the Phase I Settlement Agreement, and
12 warrant additional remedies beyond those approved in connection with resolution of Phase I. The Parties
13 did not, however, attempt to determine the specific number of violations at issue and, absent the Phase
14 II Settlement Agreement, the CPUC could have determined that financial remedies in excess of the \$10
15 million contemplated in the Phase II Settlement Agreement were warranted.

16 Additionally, the Financial Remedies were highly negotiated and tailored to these specific
17 circumstances. The Financial Remedies take into account that the Utility has already paid substantial
18 amounts (\$97.5 million) in connection with the Phase I Settlement Agreement, which covered violations
19 involving many of the same Utility employees and CPUC proceedings that are at issue in Phase II of the
20 Ex Parte OII. The Non-Financial remedies are tailored to promote compliance with the Ex Parte Rules
21 and provide greater transparency into the Utility's communications with the CPUC, to the benefit of the
22 Utility, its estate, and its creditors and customers. Absent the Phase II Settlement Agreement, there is
23 no guarantee that a final CPUC determination would take into account these circumstances and provide
24 for similarly tailored remedies.

25 For the above reasons, and because the CPUC has already approved the Phase II
26 Settlement Agreement and determined that it is "reasonable in light of the record, is consistent with law,
27 and is in the public interest," I believe the Phase II Settlement Agreement should be approved.

1 Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury, that the foregoing is
2 true and correct to the best of my knowledge, information, and belief.

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4 Dated: April 8, 2020
5 Orinda, California

6 /s/ Steven Frank

7 Steven Frank
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